

STATE OF MICHIGAN
COURT OF APPEALS

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In re K. M. ALEXANDER, Minor.

No. 371918
Lapeer Circuit Court
Family Division
LC No. 23-013162-NA

Before: BOONSTRA, P.J., and O'BRIEN and YOUNG, JJ.

YOUNG, J.

After caring for the minor child, KMA, since birth, the legal guardian petitioned the trial court to terminate parental rights and to allow the guardian to legally adopt KMA. Respondent-parents objected and counsel was appointed for both respondent-mother and respondent-father¹ and a lawyer-guardian ad litem (“L-GAL”) was appointed for the minor child. While Lapeer County handled reimbursement for some of the costs of these appointed counsels, petitioners were assessed \$1,108.08 to pay for some of respondent-mother’s counsel’s fees and some of the L-GAL’s fees. This is contrary to statute and court rules. We vacate the orders for reimbursement and remand for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

KMA was born to respondent-mother and respondent-father in 2013. Respondents never married but dated for about two-and-a-half years, beginning when they were in high school. While respondents lived together in 2012, respondent-mother became pregnant. For part of the pregnancy, respondent-mother lived with T. Reed. After the child was born, respondent-mother eventually got her own apartment and the child remained with T. Reed. Meanwhile, respondent-

¹ Respondent-mother and respondent-father are referred to collectively as “respondents.”

father moved to Oklahoma. In February 2015, with respondents' permission, the trial court granted a petition appointing T. Reed as KMA's legal guardian.²

On November 22, 2023, petitioners filed a petition to terminate respondents' parental rights under MCL 712A.19b(f)(i) and (f)(ii). Petitioners requested the trial court exercise jurisdiction over the child because respondents neglected to provide support and necessary care for KMA, and the child has a guardian but his parents failed to "provide regular and substantial support for two years or more," and failed to contact the child for "two years or more[.]" A preliminary hearing was scheduled to occur on December 15, 2023. On November 28, 2023, the trial court found respondents and the minor child needed an attorney or L-GAL. Christine G. Strasser was appointed as L-GAL for the minor child, David N. Richardson was appointed as an attorney for respondent-father, and Seth G. Bosch was appointed as an attorney for respondent-mother. The preliminary hearing was adjourned to January 9, 2024.

On January 10, 2024, Bosch submitted a statement for his expenses related to representing respondent-mother in December 2023, and the trial court ordered payment of \$299 from the Lapeer County disbursing officer. On January 31, 2024, Bosch submitted a statement for representing respondent-mother in January 2024. On February 21, 2024, the trial court signed an order for Lapeer County's disbursing officer to pay \$50 to Bosch. On February 16, 2024, Richardson submitted a statement of service and the trial court ordered Lapeer County's disbursing officer to pay \$330 to Richardson. On March 14, 2024, the parties stipulated to adjourn the preliminary hearing to July 17, 2024. Bosch submitted a statement of service for representing respondent-mother from March 13, 2024 until March 28, 2024. On April 23, 2024, the trial court ordered the Lapeer County disbursing officer to pay \$151 to Bosch. On June 13, 2024, the trial court ordered petitioners to reimburse the trial court \$151 for respondent-mother's court-appointed attorney's services from March 13, 2024 until March 28, 2024.

On June 24, 2024, petitioners objected to the trial court's order requiring them to reimburse the court for respondent-mother's court-appointed attorney fees. Petitioners asserted they were not required to reimburse the trial court because it violated their due-process rights, and various statutes and caselaw required the expenses be paid by the public, or the county in which the proceedings occurred. On July 2, 2024, Strasser submitted a statement for her legal services and expenses related to representing the minor child from December 7, 2023 until June 25, 2024. The trial court ordered Lapeer County's disbursing officer to pay \$760.08 to Strasser.

The trial court held a hearing on July 9, 2024, addressing petitioners' objections. Petitioners' counsel asserted petitioners were not obligated to reimburse the court for respondent-mother's attorney fees. Petitioners' counsel further indicated respondent-mother had yet to actually request counsel. The trial court denied the objections and refused to set aside its order. The trial court stated petitioners were responsible for the court-appointed attorney fees of the other

² Although the trial court's order reflects the appointment of T. Reed as the minor child's guardian, certain documents contained in the record refer to A. Reed and T. Reed as the child's "guardians," and they together petitioned for the termination of respondents' parental rights and for the right to adopt the child. We will refer to A. Reed and T. Reed collectively as "petitioners."

parties because they initiated the action, as opposed to the Michigan Department of Health and Human Services. The trial court noted respondents were “indigent.” Petitioners’ counsel asserted the trial court “sua sponte” appointed an attorney for respondent-mother before she requested one or showed she “cannot afford an attorney” at a preliminary hearing. The trial court stated this was the court’s “policy,” and because the “[s]tate isn’t bringing it, so the taxpayers of the [s]tate aren’t responsible for it.” On July 12, 2024, the trial court entered an order denying petitioners’ objections. The trial court listed the hearing date as July 9, 2024. The order was labeled an “order after preliminary hearing.”

A preliminary hearing scheduled on July 17, 2024 was adjourned “until further notice.” On July 29, 2024, the trial court entered an order finding petitioners “to be financially able to reimburse the court for costs incurred,” and ordering petitioners to reimburse the trial court \$760.08 “for the cost of service from [December 7, 2023] through [June 25, 2024] by Attorney Strasser, who was appointed to represent the child[.]” The order listed the “[d]ate of hearing” as July 29, 2024. On September 9, 2024, the trial court found petitioners “financially able to reimburse the court for costs incurred” and ordered payment of \$197 to the Lapeer County Family Court for Bosch’s court-appointed representation of respondent-mother from April 4, 2024 until July 16, 2024. The “[d]ate of hearing” was September 9, 2024. In total, petitioners were assessed \$1,108.08. Petitioners now appeal.

II. ANALYSIS

A. STANDARDS OF REVIEW

This case asks us to evaluate the imposition of attorney fees. This Court “review[s] for an abuse of discretion a trial court’s award of attorney fees.” *Powers v Brown*, 328 Mich App 617, 620; 939 NW2d 733 (2019) (quotation marks and citations omitted). “Constitutional questions and issues of statutory interpretation, as well as family division procedure under the court rules, are reviewed de novo.” *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006).

B. APPOINTMENT OF COUNSEL

In termination of parental rights cases, the right to counsel is guaranteed and “the constitutional right of due process confers on indigent parents the right to appointed counsel at hearings that may involve the termination of their parental rights.” *In re Williams*, 286 Mich App 253, 275-276; 779 NW2d 286 (2009). Statutes and the court rules also guarantee the right to counsel for respondents in termination proceedings. MCL 712A.17c(5) states: “If it appears to the court in a proceeding under section 2(b) or (c) of this chapter that the respondent wants an attorney and is financially unable to retain an attorney, the court shall appoint an attorney to represent the respondent.” MCR 3.915(B)(1)(a)(i) codifies the same.

Here, the appointment of counsel was premature. A trial court is required to “advise the respondent of the right to the assistance of an attorney at the preliminary hearing and any subsequent hearing pursuant to MCR 3.915(B)(1)(a).” MCR 3.965(B)(6). MCL 712A.17c(5) and MCR 3.915(B)(1)(a) instruct that the respondent must appear before the trial court, be instructed of the right to a court-appointed attorney if the party is able to demonstrate he or she is financially unable to retain an attorney, and then the trial court may appoint counsel.

When the trial court entered the initial June 13, 2024 order for reimbursement of respondent-mother's court-appointed attorney fees, no hearings had occurred in the child protective proceedings. Respondent-mother was never on record requesting an attorney, and the trial court had not determined her ability to pay. Although the trial court might have believed respondent-mother was indigent on the basis of her child support arrearages and inability to care for the child, which resulted in the guardianship, the trial court nevertheless was required to follow the procedure. It is also noted respondent-mother completed a financial statement indicating she had no income or assets on February 20, 2024. Although the trial court reasonably could have relied on this to justify its actions, its appointment of counsel occurred *before* this statement was received. Further, it did not negate the fact no hearing had yet occurred.

C. ORDERS FOR REIMBURSEMENT

Even if we ignore the errors in the appointment process, and assume for the sake of argument that respondents are entitled to court-appointed counsel, petitioner is not responsible for paying for that counsel. Generally speaking, for court-appointed counsels, "expenses incurred in carrying out this chapter shall be paid upon the court's order by the county treasurer from the county's general fund." MCL 712A.25(1).

However, there is some leeway for the Court to assess costs of representation against parties. MCL 712A.17c(8) states: "If an attorney or lawyer-guardian ad litem is appointed for a party under this act, after a determination of ability to pay the court may enter an order assessing attorney costs against the party or the person responsible for that party's support[.] . . ." Likewise, MCR 3.915(E) provides:

In a child protective proceeding, when an attorney is appointed for a party under this rule, the court may enter an order assessing costs of the representation against the party or against a person responsible for the support of that party after a determination of ability to pay, which order may be enforced as provided by law.

And, MCR 3.916(D) states: "In a child protective proceeding, the court may assess the cost of providing a guardian ad litem against the party or a person responsible for the support of the party after a determination of ability to pay, and may enforce the order of reimbursement as provided by law." There is nothing in the law requiring or supporting assessing costs against the party petitioning the court. Rather, MCL 712A.17c(8), MCR 3.915(E), and MCR 3.916(D) require the trial court to determine a party's ability to pay for an attorney, appoint an attorney, and then assess costs against that same party or someone responsible for supporting the party. Petitioners are not responsible for respondent-mother. While petitioners are guardians to KMA, they are not "legally obligated to pay for the ward from the guardian's own money." MCL 700.5215. Respondents are required to pay child support and currently retain their parental rights.³

³ As of October 2024, respondent-mother had over \$22,000 in arrearages. As of September 2023, respondent-father was paying \$472 monthly but had approximately \$4,000 in arrearages.

The trial court's decision to require petitioners to reimburse the trial court for the court-appointed attorney fees of respondent-mother and the L-GAL constituted a legal error and was outside the range of reasonable and principled outcomes. See *Powers*, 328 Mich App at 620. These errors were compounded when, on July 29, 2024, the trial court found petitioners "to be financially able to reimburse the court for costs incurred," and ordered petitioners to reimburse the trial court \$760.08 for Strasser's court-appointed attorney fees. This order was entered without a hearing, despite listing the "[d]ate of hearing" as July 29, 2024. On September 9, 2024, the trial court found petitioners "financially able to reimburse the court for costs incurred" and ordered them to pay \$197 for respondent-mother's court-appointed attorney fees. Again, there was no hearing despite the "[d]ate of hearing" being listed as September 9, 2024. In total, petitioners were assessed \$1,108.08 and were told that failure to pay could result in "contempt of court proceeding[s]" under MCL 712A.18(2). MCR 3.921(B) provides "the court shall ensure" the parties "are notified of each hearing[.]" Yet, the trial court did not even hold the hearings, let alone provide notice. Petitioners' monetary interest was affected by the trial court's decision to require them to reimburse the trial court for the court-appointed attorney fees, and the procedures used were insufficient to safeguard this interest. See *In re VanDalen*, 293 Mich App 120, 132; 809 NW2d 412 (2011).

III. CONCLUSION

The trial court abused its discretion and violated petitioners' due-process rights by requiring that they reimburse the trial court for the court-appointed attorney fees incurred by respondent-mother and the L-GAL.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Adrienne N. Young

/s/ Mark T. Boonstra

/s/ Colleen A. O'Brien